

the program can appear in program guides" as possible definitions for "regularly scheduled."²⁴²

104. Comments. Comments on this issue were divided. Broadcasters generally argued that the Commission should not limit the credit available for educational specials because they present valuable educational programming, and cited examples of well-regarded programs such as the "ABC Afterschool Specials" that are not regularly scheduled.²⁴³ Broadcasters also expressed the view that, because specials are usually heavily promoted in order to maximize viewership, the fact that they are not regularly scheduled does not limit their audience.²⁴⁴ On the other hand, public interest groups argued that core programming be regularly scheduled on the ground that specials are not predictable and cannot be anticipated by viewers.²⁴⁵ Children Now proposed that core programs be required to air at least once a week in a regular time slot so parents will know when to tune in and children can build on lessons taught on a daily or weekly basis.²⁴⁶ Disney and CTW, both of which produce educational programs, suggested that the Commission award credit to specials that are scheduled sufficiently far in advance to permit their inclusion in program guides.²⁴⁷

105. Discussion. We continue to believe that qualifying core programming should be regularly scheduled, particularly in view of our emphasis on improving the flow of information to parents through published program guides and other means to enable them to select educational and informational programs for their children. Programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. A large proportion of television programming, including children's programming, consists of shows that air on a routine

²⁴²Id.

²⁴³See, e.g., ABC Comments at 22-24; Cosmos et al. Comments at 17; ALTV Comments at 29-30; NAB Comments at 24. In its Supplemental Comments, NAB supported crediting only regularly scheduled programming as core, while allowing educational and informational specials to contribute to the three-hour processing guideline as part of a package of a variety of core and non-core educational and informational programming. See NAB Supplemental Comments, Attachment at 3-4 (filed July 29, 1996).

²⁴⁴See ABC Comments at 23; Tribune Comments at 17.

²⁴⁵See, e.g., CME et al. Comments at 29-30; Children Now Comments at 2; C-TREC Comments at 4; National Coalition on Television Violence Comments at 3.

²⁴⁶Children Now Comments at 2. C-TREC also supported requiring most core programming to be aired at least on a weekly basis. C-TREC Comments at 4.

²⁴⁷CTW Comments at 18; Disney Comments at 9 n.14 (contending that specials should be considered as part of a broadcasters "overall" efforts to air educational programming.).

basis.²⁴⁸ We agree with those commenters who argue that programs that air regularly can reinforce lessons from episode to episode.²⁴⁹ We also believe that regularly scheduled programs can develop a theme which enhances the impact of the educational and informational message. Accordingly, to be considered as core, we will require that educational and informational programs air on a regular basis. Furthermore, to count as regularly scheduled programming, such programs must be scheduled to air at least once a week. Regularly scheduled weekly programming is the dominant form of television programming. It is more likely to be anticipated by parents and children, to develop audience loyalty, and to build successfully upon and reinforce educational and informational messages, thereby better serving the educational and informational needs of children.²⁵⁰ It is also our view that programs that air at less frequent intervals are less likely to attract a regular audience and to be anticipated by parents.

106. Television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. Indeed, evidence suggests that a significant number of educational and informational programs, particularly those that air on Saturday, are preempted by sports and other programming.²⁵¹ Although a program must be regularly scheduled on a weekly basis to qualify as core, we will leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

107. Specials, including those scheduled to appear on a regular nonweekly basis, will not be credited as core. As stated above, we believe that programs that are aired more frequently (*i.e.*, at least once a week) are more likely to build upon and reinforce educational and informational messages, more likely to develop audience loyalty, and more likely to be anticipated by children and parents and thus attract a regular audience. Nonetheless, we recognize that educational and informational specials with a significant purpose of serving the educational and informational needs of children ages 16 and under can help accomplish the objectives of the CTA and thus can count toward the second track of our three-hour processing guideline as described below in Section V. The value of such programming is enhanced if parents are informed in advance of the program and the time it is scheduled to air. We encourage broadcasters to promote educational and informational specials and to schedule them far enough in advance to permit information about the program to be included in program guides.

²⁴⁸NAB's two station surveys demonstrate that broadcasters aired on average of 13.5 minutes per week of educational specials in 1994. NAB Comments at Attachment 1, p. 5. In contrast, NAB's survey indicated that in 1994 broadcasters aired an average of 244.74 minutes per week of regularly scheduled educational programming.

²⁴⁹See supra paragraph 104.

²⁵⁰Id.

²⁵¹See Aufderheide and Montgomery, supra n.232, at 16-17.

Substantial Length

108. As to the fifth element of our definition of core programming, we proposed in the NPRM that core programming be of substantial length (e.g., 15 or 30 minutes).²⁵² We noted that standard-length programs (30 minutes or more) are typically regularly scheduled and therefore available at predictable times, and that it is possible to schedule 15-minute programs regularly and have such programming listed in program guides. We asked commenters to address what length of program should satisfy the proposed requirement that core programming be of substantial length. Specifically, we asked whether short segments that are specifically designed to serve children's educational and informational needs should be credited as core programming and, if so, how they should be credited.²⁵³

109. Comments. Some broadcasters who addressed this issue supported crediting short segment programming as core. They argued generally that short segments (including interstitials and PSAs) can effectively teach valuable lessons, are suited to the short attention span of children, and can reach large audiences if aired during popular children's shows.²⁵⁴ ALTV and Tribune also noted that short segments are especially useful to local stations because of their low production and opportunity cost.²⁵⁵ ABC argued that many short segment programs recur each week at the same time in the same program, and thus can be anticipated.²⁵⁶ In contrast, many public interest groups argued that core programs should be at least 30 minutes long.²⁵⁷ Children Now claimed that long-form programs are more effective at teaching skills such as counting and reading, and that broadcasters are inclined to rely too heavily on short segments.²⁵⁸ Researchers Aletha Huston and John Wright agreed that 15 or 30-minute programs are more effective than short segments because they provide more

²⁵²NPRM, 10 FCC Rcd at 6330.

²⁵³Id.

²⁵⁴See, e.g., National Broadcast Association for Community Affairs Comments at 3-5; NBC Comments at 21-22; Warner Brothers Comments at 7-9. NAB took this position in its initial comments, see NAB Comments at 24, but in its supplemental comments supported requiring core programming to be at least 30 minutes in length, see NAB Supplemental Comments, Attachment at 4 (filed July 29, 1996).

²⁵⁵See ALTV Comments at 28; Tribune Comments at 19. NAB also made this argument in its initial comments. See NAB Comments at 24.

²⁵⁶See ABC Comments at 27. For example, ABC states that "ABC Schoolhouse Rock" is presented twice each Saturday morning at regular times.

²⁵⁷See, e.g., AAP Comments at 2; Children Now Comments at 2; C-TREC Comments at 4; CME Comments at 30; CDF and BCCC Comments at 9.

²⁵⁸See Children Now Comments at 1-2.

content, allow the development of a theme, and permit educational messages to be told in story form.²⁵⁹

110. Discussion. We believe that core programming should be at least 30 minutes in length. In enacting the CTA, Congress identified a number of examples of worthwhile educational and informational programs, all of which are at least one half-hour in length.²⁶⁰ Although we do not mean to suggest that these examples in the legislative history are equivalent to statutory requirements, we believe they reflect the fact that the dominant broadcast television format is 30 minutes or longer in length. We believe it reasonable that our rules, which are intended to promote the accessibility of children's educational and informational programming, reflect this current industry practice. Programs in these standard formats are more likely than shorter programming to be regularly scheduled and to be listed in program guides, and thus are easier for parents to identify for their child's viewing. In addition, programs that are 30 minutes or longer allow more time for educational and informational material to be presented, and a number of commenters stated that shows of this length can be particularly beneficial to children.²⁶¹ There was no evidence presented in response to the NPRM to support claims by some parties that children have short attention spans and thus will not benefit from substantial length programming.²⁶²

111. We will not credit educational and informational PSAs, interstitials, or other short segments as core programming. The CTA does not preclude broadcasters from counting such programming as educational and informational; indeed, we recognize that some

²⁵⁹See Huston and Wright Comments at 6-7. These commenters cited research that shows that, for children older than 5 or 6, programs that convey educational messages in story form are more effective than programs that move quickly from one idea to another. Id.

²⁶⁰See Senate Report at 6-8. See also Memorandum Opinion and Order, 6 FCC Rcd at 5101 ("Congress used standard-length programming to exemplify the type of programming the Act sought to encourage.").

²⁶¹A number of commenters stated that longer form programming is more effective because it permits the educational message to be presented in a story format. Commenters presented evidence that, beginning at age 5 or 6, children are more interested in and learn more from programs that present information in the form of a story than from public service announcements or programs with a "magazine" format that moves quickly from one idea to the next. See supra n.256. With respect to younger children, commenters also presented evidence that young children are capable of benefiting from extended educational and informational messages, as long as the show is properly tailored to the cognitive ability of the intended audience. See APA NOI Comments at 2-3. See also Petition for Reconsideration filed by APA, AAP, and the National Parent Teacher Association (May 10, 1991) in MM Docket Nos. 90-570 and 83-670, challenging the Report and Order adopting our initial rules implementing the CTA. The Petition sought reconsideration of our 1991 decision to allow public service announcements and short vignettes to qualify as programming specifically designed to serve the educational and informational needs of children, and cites evidence to refute the statement in the Report and Order that short segment programming is "well suited" to the short attention span of children.

²⁶²To the contrary, Dale Kunkel submitted comments stating that there is no scientific basis upon which to assert that children have inherently short attention spans in their processing of television content. Kunkel Comments at 10-11.

short segments have significant public interest benefits. Nevertheless, while we have previously found that short segment programming may qualify as specifically designed educational and informational programming,²⁶³ for the reasons stated above we believe that programs that are 30 minutes or more in length are a more appropriate focus of our definition of "core" programming. We also note that short segments and PSAs are less likely to be regularly scheduled or listed in program guides, and consequently are not easily located and anticipated by parents and children.²⁶⁴

112. We emphasize that programming with a significant purpose of educating and informing children that is less than 30 minutes in length, although not credited as core programming, can contribute to serving children's needs pursuant to the CTA. Such programming can count toward meeting the three-hour processing guideline when broadcasters air somewhat less than 3 hours per week of core programming, as described below. We encourage all broadcasters to continue to provide a diverse mix of educational and informational programming, including short segments and PSAs, toward their overall obligation to provide programming for children.

Identified as Educational and Informational

113. With respect to the sixth element of our definition, we proposed that stations be required to identify core programs as educational and informational at the beginning of the program, and to make available the necessary information for listing these programs as educational and informational in program guides.²⁶⁵ As discussed above, we will adopt both of these proposals in order to improve the information available to parents regarding programming specifically designed for children's educational and informational needs, and to assist them in selecting these programs for their children.²⁶⁶ We also believe this measure will make broadcasters more accountable in classifying programming as specifically designed to educate and inform. Thus, as with the other aspects of our definition of core programming, we believe that the identification requirements provide an appropriate

²⁶³We have stated previously that short-segment programming may qualify as specifically designed educational and informational programming, although broadcasters must air some standard-length children's programs to fulfill their programming renewal review requirement. See Report and Order, 6 FCC Rcd at 2115; Memorandum Opinion and Order, 6 FCC Rcd at 5101.

²⁶⁴While the NPRM, 10 FCC Rcd at 6330, raised the possibility that a core program could be 15 minutes in length, no broadcast parties addressed the issue, and the few nonbroadcast commenters who did address it stated that programs of this length rarely if ever appear on television, and would not be expected by parents and children.

²⁶⁵See NPRM, 10 FCC Rcd at 6331.

²⁶⁶See supra paragraphs 52 and 57.

regulatory incentive for licensees to comply with their statutory obligation to air programming specifically designed to serve children's educational and informational needs.²⁶⁷

Assessment Guidelines

114. In view of our adoption of a definition of core educational and informational programming that provides licensees with clearer guidance regarding the types of programming required to meet their obligation under the CTA, we believe that our permissive assessment guidelines are no longer necessary and should be eliminated.²⁶⁸ The guidelines identify factors that we encouraged licensees to consider in assessing the needs of children in the community, and we intended them to assist licensees in determining what programs meet the educational and informational needs of children under our broad definition of "educational and informational programming."²⁶⁹ The particularized definition of "specifically designed" programming that we adopt today goes beyond our existing definition of educational and informational programming and our assessment factors to further delineate the types of programming that will meet licensees' obligation to air core educational programming. In view of the additional guidance provided by our definition of core programming, we believe that the assessment guidelines are superfluous and should therefore be eliminated.

V. PROCESSING GUIDELINE

115. In the NPRM, we sought comment on several proposals for evaluating a licensee's compliance with the Children's Television Act at renewal. Specifically, we proposed to adopt one of three alternative options: (1) Commission monitoring of the amount of educational and informational programming on the air during a period of time following the adoption of measures to improve the flow of programming information to the public and adoption of a definition of "core" programming; (2) adoption of a safe harbor processing guideline specifying an amount of programming specifically designed to serve children's educational and informational needs that would represent one means of satisfying the CTA's programming obligation; and (3) adoption of a programming standard that would require broadcasters to air a specified average number of hours per week of programming specifically designed to serve the educational and informational needs of children. We also sought comment on whether we should adopt "program sponsorship" rules or guidelines, giving

²⁶⁷ As we have noted, supra n.119, we will exempt noncommercial stations from these identification requirements.

²⁶⁸ See NPRM, 10 FCC Rcd at 6331. Comments were divided on whether these guidelines should be preserved. For example, ABC argued that the guidelines should be retained because they permit broadcasters to counter-program, see ABC Comments at 28-29, while C-TREC argued that they should be eliminated on the ground they serve to perpetuate the current "abysmal" state of children's programming, see C-TREC Comments at 5.

²⁶⁹ See Report and Order, 6 FCC Rcd at 2115.

licensees the option of satisfying a portion of the prescribed amount by providing financial or other "in kind" support for programming aired on other stations in their market.²⁷⁰

116. Comments. A number of broadcasters and broadcaster associations opposed both a programming standard and a safe harbor processing guideline, arguing generally that these options would infringe too greatly on broadcaster programming discretion. They also argued that quantification was contrary to the legislative history. In addition, they questioned the need for taking such measures in view of their claim that there already is a substantial amount of educational programming available to children. These parties prefer the Commission's proposal to monitor future licensee performance in lieu of adopting either a programming standard or a processing guideline.²⁷¹ For example, ALTV stated that its latest survey of independent stations demonstrates "dramatic and continuing" improvement in the amount of educational programming available on independent stations since passage of the CTA.²⁷² ALTV suggested that the Commission collect information regarding the industry's performance over the course of the next renewal cycle, commencing in October 1996, at which time all stations will have operated under the CTA's requirements for a full license term, permitting them sufficient time to become familiar with the requirements and obtain qualifying programming.²⁷³

117. Although ALTV argued that there is no need for a programming standard or a processing guideline to increase the amount of educational programming, in the event such action is taken ALTV suggested the Commission issue a policy statement delineating a safe harbor policy whereby stations could choose to air either 2 hours of core programming or 4 hours of core and non-core programming per week.²⁷⁴ The policy statement would also list other practices stations could choose to adopt at their own option, such as use of consultants and joint ventures with public TV stations. According to ALTV, a policy statement is preferable to a guideline or a rule because it permits greater licensee flexibility and can more easily be eliminated or changed.

118. NAB filed initial comments also opposing any quantitative guidelines or requirement. In supplemental comments, however, NAB set forth its support for a "processing guideline under which broadcasters could obtain staff approval of the children's television service portion of their renewal applications by showing that they either aired an

²⁷⁰NPRM, 10 FCC Rcd at 6336-49.

²⁷¹See, e.g., ABC Comments at 50; CBS Comments at 5; NBC Comments at 3; ALTV Comments at 12; Cosmos et al. Comments at 19; Golden Orange Comments at 6.

²⁷²ALTV Comments at 13.

²⁷³Id. at 24-25. NBC suggests the monitoring period should be three years or three broadcast seasons. See NBC Comments at 25.

²⁷⁴ALTV Comments at 37-43.

average of three hours per week of newly defined 'core' educational and informational programming for children or that, while they aired somewhat less than this amount of 'core' programming, they aired a package of other programs that demonstrated the same level of commitment to the needs of children."²⁷⁵ NAB stated that this "proposal overall is consistent with Congress' intent in the Act, addresses specific problems that the record before the Commission demonstrates, and provides useful guidance to licensees about the ways that they can fulfill their obligations under the Act while allowing them the programming flexibility that the FCC has always recognized is an essential element of the Communications Act."²⁷⁶

119. The vast majority of nonbroadcast commenters, including such varied groups as CME et al. (including the PTA, NEA, and American Psychiatric Association), CDF and BCCC, and APA, advocated the adoption of either a processing guideline or a programming standard in conjunction with a monitoring program to assess the effectiveness of these measures in improving broadcaster performance.²⁷⁷ They contended that monitoring alone, without a quantitative programming standard or safe harbor guideline, would not ensure the provision of a sufficient amount of educational children's programming. These commenters generally argued that reliance on the voluntary efforts of broadcasters to increase the amount of educational programming has failed, and that marketplace forces alone do not generate sufficient educational programming.²⁷⁸ Although a few commenters favored a processing guideline over a programming standard,²⁷⁹ most public interest groups and other

²⁷⁵NAB Supplemental Comments at 1 (filed July 29, 1996).

²⁷⁶Id. at Attachment, page 1.

²⁷⁷See AAP Comments at 2-3; CDF and BCCC Comments at 6; CME et al. comments at 40. See also Reply Comments of Henry Geller at 1-9 (stating that the explicit language and legislative history of the CTA make it clear that the FCC cannot rely simply upon monitoring industry compliance, but must instead review licensee performance at renewal, and that a processing guideline is the best approach in conducting this review). See also Tribune Comments at 6 (supporting adoption of a processing guideline if a monitoring study indicates further action to increase the amount of educational programming is warranted). See also Letter from Congressman Michael Castle (October 10, 1995) (urging adoption of a safe harbor processing guideline set at five hours, and stating that five hours is still too low, but is perhaps more realistic than ten or twelve). Other parties expressed the view that a processing guideline has the same practical effect as a rule, as broadcasters will air no less than the minimum to guarantee timely and uncontested license renewal. See CBS Comments at 33; Westinghouse Comments at 7; The Media Institute Comments at 15.

²⁷⁸See, e.g., CME et al. Comments at 6-9; Children Now Comments at 3; CTW Comments at 20; Kunkel Comments at 7; Huston & Wright Comments at 7.

²⁷⁹See, e.g., AAP Comments at 2; CME et al. Comments at 1; CDF and BCCC Comments at 10; CTW Comments at 23; Geller Reply Comments at 1-9. CDF prefers a five year monitoring period. See CDF and BCCC Comments at 10. In contrast, CEP supports monitoring, as an alternative to either a processing guideline or a programming standard, on the ground that the latter options would interfere too greatly in broadcaster programming discretion. See CEP Comments at 12.

non-broadcast commenters expressed a preference for a programming standard.²⁸⁰ These commenters also noted that a standard applicable to all stations would ensure that no single station is put at a potential competitive disadvantage by acting against its economic self interest in providing more educational programming. In this regard, Children Now stated its belief that the lack of clear quantitative requirements creates a financial incentive for broadcasters to subvert the intent of the CTA because broadcasters believe that airing educational programming results in lower ratings and lost advertising revenues.²⁸¹

120. Discussion. Based on our review of the record, as well as our experience in enforcing the CTA over the past five years, we have decided to adopt a three-hour processing guideline. As set forth more fully below, under this guideline, the Mass Media Bureau will be authorized to approve the Children's Television Act portions of a broadcaster's renewal application where the broadcaster has aired three hours per week (averaged over a six month period) of educational and informational programming that has as a significant purpose serving the educational and informational needs of children ages 16 and under. A broadcaster can demonstrate that it has aired three hours per week of such programming in either of two ways:

(A) By checking a box on its renewal application and providing supporting information indicating that it has aired three hours per week of regularly scheduled, weekly shows that are 30 minutes or longer and that otherwise meet the definition of "core programming" as described in Section IV, supra; or

(B) By showing that it has aired a package²⁸² of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming.

²⁸⁰We also received approximately 20,000 letters and Internet messages from members of the public, many of whom urged us to adopt a quantitative processing guideline or programming standard. Other commenters, although they did not address specifically the distinction between a programming standard and a safe harbor processing guideline, supported requiring broadcasters to air a minimum amount of educational programming. See, e.g., Letter from President Clinton (September 18, 1995) (advocating a requirement that broadcasters air at least three hours per week, and preferably more, of educational children's programming); Letter from Senator Joseph Lieberman and 32 other members of the U.S. Senate (June 12, 1996) (urging adoption of a minimum three-hour threshold of educational programming); Letter from Congressman Edward Markey and 219 other members of Congress (May 29, 1996) (urging adoption of a minimum three-hour threshold of educational programming).

²⁸¹See Children Now Comments at 3.

²⁸²By "package" we do not mean to imply that the programming is in any way related by topics or purchased from a single source.

Renewal applications that do not meet this guideline will be referred to the Commission, where the applicant will have a full opportunity to demonstrate compliance with the CTA by, for example, relying in part on sponsorship of core educational and informational programs on other stations in the market that increases the amount of core educational or informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming.

121. Although in 1991 we concluded that we should not quantify a broadcaster's CTA obligation,²⁸³ based on our experience over the past five years and the record in this proceeding, we believe a processing guideline approach is warranted at this time. We believe that three hours per week is a reasonable benchmark for all broadcast television stations to meet six years after enactment of the CTA. NAB states that commercial broadcasters were, on average, broadcasting two hours per week of regularly scheduled, standard length educational programming at the time the CTA passed in 1990.²⁸⁴ While we do not know whether Congress was aware of this data in passing the CTA, the Act's legislative history makes clear that Congress was generally aware of the television programming being broadcast in 1990 when it found that "the marketplace had failed to provide an adequate supply of children's educational programming," and that it desired that the amount of such programming be increased.²⁸⁵ Thus, airing two hours per week of such programming six years after passage of the CTA clearly is not compatible with the long-term performance improvement Congress intended when it passed the CTA, and a processing guideline of three hours is clearly a reasonable means of implementing the statute at this time.

122. Our decision to set the guideline at this level does not rely upon a firm conclusion as to the amount of children's educational and informational programming currently being provided in the market, but rather on the inferences that we can draw from the entire record in this proceeding. NAB states, under its definition of core programming, that commercial broadcasters air an average of approximately four hours per week of educational and informational programming in fulfillment of their obligation under the CTA. Although we cannot verify NAB's figure,²⁸⁶ we take the NAB conclusion as evidence that broadcasters believe that it is reasonable to devote three hours per week of their air time to educating children. Moreover, the studies of ALTV, Fox, and Kunkel suggest that this is a reasonable, achievable guideline.

²⁸³See Report and Order, 6 FCC Rcd at 2115. See also infra paragraphs 128-129.

²⁸⁴NAB Comments at 7.

²⁸⁵Senate Report at 1, 5.

²⁸⁶As we have explained, the studies filed in this proceeding are not conclusive due to differences in their methodologies, but allow us to draw some conclusions about the average amount of children's educational and informational programming that broadcasters are airing. See generally supra paragraphs 35-42, 44.

123. Our conclusion that a three-hour per week programming guideline is not unreasonable is further confirmed by the commitment of the CBS network and CBS-owned stations to provide three hours per week of core educational and informational programming by the fall 1997 season (when our new rules will go into effect). On September 20, 1995, the Westinghouse Electric Corporation announced that it would increase the amount of core programming provided by its recently acquired CBS television network and aired by its owned-and-operated stations. Under this plan, Westinghouse will double network children's programming from the one hour now broadcast on the CBS network to two hours, and will add a third hour by the beginning of the fall 1997 season.²⁸⁷ With this initiative, over 200 CBS affiliates -- over 17 percent of the total number of commercial television stations in the country -- already have in place the means of providing at least three hours per week of educational and informational programming specifically designed to educate and inform children.

124. In the context of the CTA, a processing guideline is clear, fair and efficient. First, our experience in reviewing the children's programming portions of renewal applications teaches us that a processing guideline is desirable as a matter of administrative efficiency in enforcing the CTA and provides desirable clarity about the extent of a broadcaster's programming responsibilities under the statute. Due to the volume of broadcast television renewal applications received by the Commission -- approximately 1500 commercial and noncommercial applications during each renewal cycle -- the Commission has for many years delegated to the Mass Media Bureau the authority to act on applications that do not present difficult issues. In the absence of an articulated guideline regarding CTA compliance that the Bureau would use to distinguish applications that are properly processed at the staff level from those that must be sent to the full Commission, a de facto processing guideline likely would develop.²⁸⁸ But this de facto guideline, if unpublished, would not provide clear and timely notice of what a licensee can do to guarantee renewal under the CTA. By adopting a safe harbor processing guideline in this order, the Commission is simply giving public notice of the procedures it will use to evaluate a broadcaster's children's educational and informational programming performance.²⁸⁹ Licensees and the public will

²⁸⁷Westinghouse stated that these programs will be "specifically designed to serve the educational and informational needs of children," and will be broadcast after 7:00 a.m. to ensure that they "will be accessible to the greatest number of young viewers." This initiative will run for three years, through the end of the 1998-99 season, after which "its effectiveness will be thoroughly evaluated by Westinghouse." See Stockholders of CBS Inc., FCC 95-469, released Nov. 22, 1995, at ¶ 13.

²⁸⁸See supra paragraph 42.

²⁸⁹The Commission in the past has adopted processing guidelines to achieve similar purposes. For example, the Commission's non-entertainment programming processing guidelines provided that the applications of licensees that offered less than certain amounts of non-entertainment programming had to be acted upon by the Commission rather than by the Bureau. See Deregulation of Radio, 84 FCC 2d 968, 975, recon., 87 FCC 2d 797 (1981), aff'd in part, remanded in part, Office of Communication of United Christ v. FCC, 707 F.2d 1413, 1432 (D.C. Cir. 1983). It is universally accepted that these guidelines were "purely procedural." Id. at 1432.

consequently know with certainty and in advance what a licensee can do to ensure that it meets its CTA obligations.

125. The guideline will also help ameliorate the inequities that may arise from the economic disincentives that lead some stations to air little core programming. Although some broadcasters are airing a significant amount of educational and informational programming, the evidence suggests that others are not.²⁹⁰ Indeed, as we have discussed previously, there are economic pressures on licensees not to air children's educational and informational programming or to air it at times when relatively few children are watching.²⁹¹ A processing guideline will help minimize the inequities and reduce the disincentives created by below-average performers by subjecting all broadcasters to the same scrutiny for CTA compliance by the Commission at renewal time. In contrast to the current situation, a broadcaster that wishes to air an ample amount of core educational programming can feel confident that, as a general matter, its competitors will be airing at least three hours of core programming or its equivalent. Thus, like our public information initiatives and definitional requirements, the processing guideline will allow the marketplace to function more effectively in providing educational and informational children's programming. Moreover, the greater certainty provided by the processing guideline we adopt today should create a more stable and predictable demand for such programming, and thus further the CTA's goal of increasing the availability of programs that teach and inform the nation's children.

126. The processing guideline we adopt today is consistent with the CTA in that it provides a measure of flexibility for licensees in meeting the requirements of the CTA. Broadcasters that air somewhat less than three hours per week of core programming can also receive staff-level renewal. We create this option not to encourage broadcasters to air fewer than three hours per week of core programming; we encourage broadcasters to air more than three hours. Rather, we create this option to recognize, as Congress did, the need for flexibility for broadcasters.

127. We further believe the processing guideline we adopt today is consistent with the text of the Children's Television Act, which requires us to "consider the extent" to which licensees serve the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."²⁹² The CTA's renewal review requirement involves, at least in part, an assessment of the amount of educational and informational programming shown by each licensee.²⁹³ By

²⁹⁰See supra paragraphs 40-42, and 44.

²⁹¹See supra paragraph 29-34.

²⁹²47 U.S.C. § 303b(a)(2).

²⁹³See Geller Reply Comments at 1-9.

establishing a processing guideline, we provide a clear benchmark for assessing broadcasters' performance.

128. In adopting a processing guideline today, we deliberately depart from the approach to implementing the CTA underlying our current rules as promulgated in 1991. As explained above, we conclude today that the public interest and the interests Congress sought to promote through the CTA will be better served by this processing guideline approach.

129. We recognize that this is contrary to our earlier interpretation of the CTA as precluding quantification of the CTA obligation. We reached this conclusion in 1991 on the grounds that the statute itself "impos[ed] no quantitative standard" and the "legislative history suggest[ed] that Congress meant that no minimum amount criterion be imposed."²⁹⁴ In reaching a contrary conclusion today, we begin with the fact that nothing in the statutory language of the CTA forbids the use of a processing guideline. Furthermore, although there is specific language in the legislative history, cited in our 1991 Report and Order and by parties in this proceeding, stating the "Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard,"²⁹⁵ this language does not prohibit us from seeking to provide greater clarity and guidance through a processing guideline. Rather, this language simply makes clear that the CTA does not require quantitative standards or guidelines. It is not our conclusion today that we must adopt a quantitative guideline, but that the processing guideline approach we adopt will clarify the imprecision of our current rules that has led to a variation in the level and nature of broadcasters' compliance efforts that is incompatible with the intent of the CTA. Thus, because of its clarity, fairness, and ease of administration, a processing guideline will remedy the shortcomings of our initial rules and thereby provide the appropriate counterweight to the market forces identified by Congress that tend to discourage broadcasters from airing children's educational and informational programming.²⁹⁶

²⁹⁴Report and Order, 6 FCC Rcd at 2115.

²⁹⁵The House Report states: "The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to pass a license renewal" House Report at 17. The Senate Report contains almost identical language. See Senate Report at 23. Similar statements were also made on both the House and Senate floors. See, e.g., 136 Cong. Rec. S10122 (July 19, 1990) (comments of Senator Inouye that "[t]he Committee does not intend that the FCC interpret this section as requiring or mandating quantification standards...."); 136 Cong. Rec. 148536 (Oct. 1, 1990) (comments of Speaker Foley that "[t]his legislation does not require the FCC to set quantitative guidelines for educational programming...."). Thus, we do not by our decision today suggest that we are required by the CTA to adopt a quantitative standard. As commenters have noted, such a conclusion is contradicted by the statement in the legislative history of the CTA. On the other hand, we do not read this history to preclude the administrative step we take today.

²⁹⁶See supra paragraphs 29-34.

130. We consequently believe a safe harbor processing guideline will serve the public interest by providing a reasonable degree of certainty while also preserving a reasonable degree of flexibility for broadcasters. Renewal applications will be divided into two categories for purposes of staff-level CTA review. Applications falling into neither of these categories will be referred to the Commission for consideration. We will revise our license renewal form to reflect this processing guideline. In revising the renewal form, we will seek to minimize the reporting burden on licensees by, for example, allowing them to rely on the children's programming reports that they have prepared previously.²⁹⁷

Category A

131. Broadcasters that air an average of three or more hours per week of programming that satisfies our new definition of programming "specifically designed" to serve children's educational and informational needs will have their applications approved by the staff with respect to CTA compliance. A licensee seeking review under this category must simply check a box on our revised renewal form, and provide supporting information, indicating that it has aired three hours per week of regularly scheduled, weekly shows that are 30 minutes or longer and that otherwise meet the definition of core programming.

132. To provide broadcasters scheduling flexibility, we will allow the three-hour core programming benchmark to be averaged over a six-month period. We will also allow repeats and reruns of core programming to be counted toward fulfillment of the three-hour guideline. As Tribune pointed out, virtually all network and syndicated programs are repeated to increase audience exposure.²⁹⁸

Category B

133. Broadcasters that air somewhat less than three hours per week of core programming will also receive staff-level approval if they show that they have aired a package of different types of educational and informational programming that demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. We do this to create a measure of flexibility as to how broadcasters may qualify for routine staff processing of their applications. Although core programming is our primary focus under the Children's Television Act, we believe that specials, regularly scheduled non-weekly programs, short-form programs, and PSAs with a

²⁹⁷As noted above, we will continue our policy of exempting noncommercial television stations from specific record-compilation, filing and submission requirements. See Memorandum Opinion and Order, 6 FCC Rcd at 5101. As is our current practice, we will require noncommercial broadcast television stations "to maintain documentation sufficient to show compliance at renewal time with the Act's programming obligations in response to a challenge or to specific complaints." Id. at 5102. Any such showing that a noncommercial station may need to make will be governed by the definition of core programming and the processing guideline we adopt today.

²⁹⁸Tribune Comments at 22-23. See also CTW Comments at 24 n.22.

significant purpose of educating and informing children ages 16 and under can help accomplish the objectives of the Act and can count toward the staff-level processing guideline. Airing such programming or core programming during prime time would also be a relevant factor under this category, as would investing a substantial amount of money in developing core programming aired on the broadcaster's channel. A broadcaster seeking to secure staff approval under this category must show that any reasonable observer would recognize its commitment to educating and informing children to be at least equivalent to the commitment reflected in Category A.

134. Review of individual Category B applications will require a degree of evaluation and judgment by the staff. We expect the staff to exercise this discretion judiciously. We expect that, as broadcasters present different fact patterns, the Bureau, with guidance from the Commission as necessary, will assess the weight to be given to particular kinds of noncore efforts and will process such fact patterns in a consistent manner over time.

Commission Consideration

135. Broadcasters that do not fall within Category A or B will have their renewal applications referred to the full Commission. Licensees referred to the Commission should be on notice by this order that they will not necessarily be found to have complied with the Children's Television Act. Given the modest nature of the guideline described in Categories A and B, we expect few broadcasters will fail to meet this benchmark. However, even if a licensee did not meet the guideline for staff approval, it will have an opportunity to make a showing before the Commission that it has satisfied its Children's Television Act obligations in other ways. Broadcasters will have a full opportunity to make this demonstration by, for example, and as described more fully below, relying in part on sponsorship of core educational and informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming. It is also possible that a licensee might seek to demonstrate that it suffered such serious economic hardship -- such as bankruptcy -- that might excuse noncompliance with the CTA.

136. If we find that a broadcaster has not complied with the CTA, we will apply the same remedies that we use in enforcing our other rules. These remedies will vary depending on the severity of the deficiency based on objective criteria. For less serious deficiencies, we will consider letters of admonition or reporting requirements. We may also consider using a "promise versus performance" approach. This would be a prospective remedy under which a licensee would detail its plan for coming into full compliance with CTA programming obligations; if this plan meets with Commission approval, the station's license would be renewed on the condition that the licensee adheres to the plan absent special circumstances. For more serious violations, we will consider other sanctions, including forfeitures and short-term renewals. In extreme cases, we will consider designating the license for hearing to determine whether the licensee's violations of the CTA and our

implementing rules warrant nonrenewal under the standards set forth in Section 309(k) of the Communications Act.²⁹⁹

137. Special Nonbroadcast Efforts. The CTA states that, "[i]n addition to consideration of the licensee's [educational] programming, the Commission may consider . . . any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children." At the Commission level, a licensee may present evidence of such special nonbroadcast efforts. To receive credit under this provision for a "special" nonbroadcast effort, a broadcaster must show that it has engaged in substantial community activity. To receive credit under this provision for a special nonbroadcast effort that "enhance[s]" the educational value of a broadcaster's educational programming, a broadcaster must show a close relationship between its core programming and its nonbroadcast efforts. Finally, we note that the text of this provision plainly does not relieve a broadcaster of the obligation to air core programming. The statute permits the Commission to consider special nonbroadcast efforts only "in addition to consideration of the licensee's [educational] programming."

138. Special Sponsorship Efforts. The CTA states that, "[i]n addition to consideration of the licensee's [educational] programming, the Commission may consider . . . any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children."³⁰⁰ Some parties supported giving credit to a sponsoring station in assessing its CTA performance at renewal time,³⁰¹ while others opposed the idea.³⁰² We will allow a licensee to present evidence at the Commission level of such special sponsorship efforts. To receive credit under this provision for a "special" sponsorship effort, a broadcaster must demonstrate that its production or support of core programming aired on another station in its market increased the amount of core programming on the station airing the sponsored core programming. Also, we note again that the text of Section 103(b) does not relieve a broadcaster of the obligation to air programming specifically designed to serve the educational and informational needs of children. It permits the Commission to consider sponsorship nonbroadcast efforts only "in addition to consideration of the licensee's [educational] programming."

²⁹⁹See 47 U.S.C. § 309(k).

³⁰⁰Id. at § 303b(b)(1).

³⁰¹See Comments of ACTS at 9, 11; Association of America's Public Television Stations and the Public Broadcasting Service at 10-19; CPB at 3-5; C-TREC at 7; Ronald Davis at 2; Reply Comments of ALTV at 21-22.

³⁰²See AAP Comments at 3; CME *et al.* Comments at 48-50; Children Now Comments at 5; CTW Comments at 27; UCC Comments at 3-5. These parties argued that the majority of sponsored programs would appear on noncommercial stations, thus adding to the existing imbalance between the amount of educational programming appearing on such stations as opposed to commercial stations.

139. In response to the NPRM's proposal to establish program sponsorship guidelines, commenters raised a number of issues regarding the appropriate circumstances for crediting sponsorship efforts, such as the minimum amount of core programming that a sponsoring station must air on its own station and the extent to which programs could be sponsored on noncommercial stations. We believe these matters are best addressed on a case-by-case basis considering individual showings licensees may seek to make rather than by the adoption of program sponsorship guidelines. We will be a better position to assess these matters in individual cases after having gained some experience with the operation of our new rules and programming guideline in the children's television marketplace.

Monitoring and Reexamination of Rules

140. We will monitor the broadcast industry's children's educational programming performance for three years based upon the children's programming reports that licensees will file with us annually on an experimental basis. We will conduct a review of these reports at the end of this three-year period and take appropriate action as necessary to ensure that stations are complying with the rules and guidelines we adopt today. To supplement this review, Commission staff will also conduct selected individual station audits during the next three years to assess station performance under our new children's educational and informational programming rules once they go into effect.

141. We invited comment in the NPRM on whether we should sunset any processing guideline or program standard that we adopt on December 1, 2004, unless affirmatively extended by the Commission.³⁰³ The few commenters who addressed this issue expressed concern that the rules not be eliminated without an evaluation of whether continued regulation was warranted.³⁰⁴ Based on the record, we do not believe that an automatic expiration of the rules, absent further Commission action, is appropriate. One of our principal objectives in implementing the safe harbor processing guideline is to provide broadcasters and the public with fair notice and certainty regarding the level of performance at which a licensee can be assured it is complying with the CTA. Automatic elimination of the processing guideline is inconsistent with this important objective.

VI. RENEWAL PROCEDURES

License renewal challenges

142. One of our objectives in this proceeding has been to encourage the public to participate in promoting broadcasters' compliance with the CTA, and to reduce the role of government in enforcing compliance. As one means of achieving this goal, we proposed in

³⁰³NPRM, 10 FCC Rcd at 6349.

³⁰⁴See AAP Comments at 3; CTW Comments at 24.

the NPRM to require that any challenger filing a petition to deny a renewal application show that he or she had first attempted to resolve the alleged problem with the station in question.³⁰⁵ The commenters who addressed this issue were divided. Cosmos et al. supported the proposal as long as licensees retained discretion as to how to respond to any complaints received from members of the public.³⁰⁶

143. We have decided not to require members of the public to communicate with a licensee prior to filing a petition to deny. As CME et al. pointed out, such a requirement could be unduly burdensome to the public, prevent legitimate complaints from being heard, and deny the FCC an important source of information.³⁰⁷ We will nonetheless encourage parties to seek to resolve CTA programming concerns with the station before filing a complaint with the Commission, and will consider whether a petitioner has engaged in such conciliation efforts as a factor in assessing a petition to deny.

Certification

144. As another means of reducing the government's role in reviewing CTA compliance, in the event we adopted a processing guideline or programming standard, we sought comment in the NPRM on whether we should permit licensees to certify whether they have aired the prescribed amount of core programming.³⁰⁸ If this proposal were adopted, we stated that, in the absence of a challenge to their license renewal, licensees would not be required to submit materials documenting their programming performance, but only to retain them in their public inspection files.

145. We decline to adopt this proposal. The parties that addressed this proposal, CME et al. and Children Now, opposed it on the ground that it would inhibit public monitoring of broadcaster compliance and was contrary to Congress' intent that the Commission review a licensee's children's programming records.³⁰⁹ Given these concerns, and our decision to require broadcasters to file children's programming reports with the Commission for an experimental three-year period,³¹⁰ we do not believe a certification approach is workable.

³⁰⁵NPRM, 10 FCC Rcd at 6344.

³⁰⁶See Cosmos et al. Comments at 9.

³⁰⁷See CME et al. Comments at 46-47.

³⁰⁸NPRM, 10 FCC Rcd at 6345.

³⁰⁹See CME et al. Comments at 40 n.21; Children Now Comments at 5.

³¹⁰See supra paragraph 68.

VII. FIRST AMENDMENT ISSUES

146. Comments. Broadcasters, including ABC, CBS, Cosmos *et al.*, Donrey, Great Trails, Meredith, NAB, and NAB advocate Professor Rodney Smolla (of the Marshall-Wythe School of Law), argued that quantitative processing guidelines would violate the First Amendment. Henry Geller, as well as Price and Meyerson, maintained that a processing guideline is constitutionally permissible. We address these comments in the course of our substantive discussion below.

147. Discussion. The First Amendment arguments raised by opponents of our proposed CTA regulations essentially fall into two categories -- arguments that attack the CTA obligation and arguments that attack the quantification of the CTA obligation. To the extent that some commenters argue that the CTA is unconstitutional, Congress itself addressed that issue.³¹¹ It specifically concluded that "it is well within the First Amendment strictures to require the FCC to consider, during the license renewal process, whether a television licensee has provided information specifically designed to serve the educational and informational needs of children in the context of its overall programming."³¹² As the Senate Report noted, broadcasters, in exchange for "the free and exclusive use of a valuable part of the public domain," can be expected to serve as a public fiduciary, obliged to serve the needs and interests of their viewers.³¹³ That obligation includes the obligation to serve the needs of children.³¹⁴ Even more specifically, as the FCC, the courts, and Congress have concluded, a broadcaster's public interest obligation properly includes an obligation to serve the educational and informational needs of children.³¹⁵ The question in this proceeding is not whether the Commission should give effect to the CTA, but how it should do so.

148. We do not understand NAB and Professor Smolla to be arguing that the CTA is unconstitutional insofar as it provides that broadcasters must serve the educational and informational needs of children and demonstrate that they have done so at renewal.³¹⁶ Professor Smolla argues that, were we to adopt either a rule requiring a specified amount of particular programming or a processing guideline that effectively imposed a similar requirement, such a rule or processing guideline would unconstitutionally burden speech and,

³¹¹ Senate Report at 10-18; see also House Report at 8-12.

³¹² Senate Report at 16.

³¹³ Id. (citing Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969)).

³¹⁴ See id. (citing Prince v. Massachusetts, 321 U.S. 158, 168 (1943)).

³¹⁵ Id. (citing ACT v. FCC, 564 F.2d 458 (D.C. Cir. 1977) (affirming our 1974 Policy Statement specifying that the public interest obligation included an obligation to provide educational and informational programming for children)).

³¹⁶ See NAB Comments, Attachment at 6; ("Smolla Comments") at 35-36.

further, would rest on an improper construction of the CTA.³¹⁷ Such rules or processing guidelines were among the options on which we sought comment in the NPRM. As we explain above, while we adopt a processing guideline, we do so in a manner that provides broadcasters with flexibility in the ways in which they can satisfy the requirements imposed by the CTA.

149. The course we adopt today -- defining what qualifies as programming "specifically designed" to serve the educational needs of children and giving broadcasters clear but nonmandatory guidance on how to guarantee compliance -- is a constitutional means of giving effect to the CTA's programming requirement. "It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 394 (1969). Congress's authority to order "suitable time and attention to matters of great public concern" includes the authority to require broadcasters to air programming specifically designed to further the educational needs of children. The airwaves belong to the public, not to any individual broadcaster.³¹⁸ As the Supreme Court observed in CBS, Inc. v. FCC,³¹⁹ "a licensed broadcaster is 'granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.'"³²⁰ The fact that Congress elected to retain public ownership of the broadcast spectrum and to lease it for free to private licensees for limited periods carries significant First Amendment consequences.

150. In CBS v. FCC the Supreme Court upheld a challenge to the statute (47 U.S.C. § 312(a)(7)) that requires broadcasters to provide reasonable access to individual candidates seeking federal elective office. Similarly, here, the CTA requires broadcasters to serve the educational and informational needs of children through programming specifically designed for those needs. Both provisions require broadcasters to air certain types of programming they might not otherwise choose to provide. However, the obligation imposed by Section 312(a)(7) appears to be significantly more burdensome than the obligation imposed by the CTA. Under Section 312(a)(7), broadcasters have no control over the content of the political advertising. In contrast, under the CTA broadcasters are obligated to provide children's educational programming, yet they retain wide discretion in choosing what programs to provide, a fact little changed by the clarifying measures we adopt today.

³¹⁷Smolla Comments at 14-17, 27-33.

³¹⁸See 47 U.S.C. 301; FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 755, 806 n.25 (1978).

³¹⁹453 U.S. 367 (1981).

³²⁰Id. at 395.

151. Because we are adopting a processing guideline that allows broadcasters more discretion in choosing the ways in which they will meet their CTA obligations than the one we proposed in the NPRM, most of the arguments raised by Professor Smolla and others commenters are not applicable.³²¹ In Turner Broadcasting v. FCC,³²² the Court made clear that the Commission has the authority to "inquire of licensees what they have done to determine the needs of the community they propose to serve," but not to "impose upon them its private notions of what the public ought to hear."³²³ We have chosen to adopt a processing guideline that requires broadcasters to show us how they have served the educational and informational needs of children, and which provides guidance to them about ways in which they can meet that obligation. We are not, however, telling licensees what topics to discuss. The Turner Court reaffirmed that "broadcast programming, unlike cable programming, is subject to certain limited content restraints imposed by statute and FCC regulation."³²⁴ And, as examples of (presumably) permissible regulation, the Court cited the Children's Television Act, together with the equal-time and personal attack rules and the rules channeling indecent programming away from times when children are most likely to be in the viewing audience.³²⁵ If these latter regulations survive constitutional scrutiny, then so, a fortiori, would the Commission's considerably less intrusive proposal for giving meaningful effect to the Act by defining "core" educational programming and establishing a procedure that broadcasters can use to assure routine staff processing of the CTA portion of their renewal applications.

152. Our new regulations, like the CTA itself, impose reasonable, viewpoint-neutral conditions on a broadcaster's free use of the public airwaves. They do not censor or foreclose speech of any kind. They do not tell licensees what topics they must address. They provide only that broadcasters report the educational objective of the program and the expected educational effects. Moreover, they expressly provide that broadcasters need not describe the viewpoint of the program or the opinions expressed on the program.

153. The CTA and our regulations directly advance the government's substantial, and indeed compelling, interest in the education of America's children. As Congress recognized, "[i]t is difficult to think of an interest more substantial than the

³²¹In its supplemental comments proposing a processing guideline of the sort we adopt, NAB stated that "[b]ecause this proposal retains substantial flexibility for broadcasters in meeting their obligations under the Children's Television Act, NAB believes that a constitutional rationale can be crafted in support of these regulations that rests on established First Amendment doctrines long accepted by the Commission." NAB Supplemental Comments at 2 (filed July 29, 1996).

³²²114 S. Ct. 2445 (1994).

³²³Id. at 2463.

³²⁴Id. at 2462.

³²⁵Id. at 2462-63 n.7.

promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive."³²⁶ In other contexts, the courts and commentators have recognized the government's "compelling" interest in "safeguarding the physical and psychological well being" of minors.³²⁷

154. A recent case, Action for Children's Television v. FCC,³²⁸ affirms the vitality of the government's interest in ensuring that television programming is consistent with the needs of America's children. In Action for Children's Television, the court of appeals echoed the Supreme Court's recognition of the "well nigh universal belief that good books, plays and art . . . improve the mind, enrich the human personality, and develop character." It then concluded that a legislature may regulate the exposure of children to indecent material on the corollary assumption that indecent material may "exert a corrupting and debasing impact."³²⁹ If Congress and the Commission may rely on this corollary to ban broadcast of certain material during specified hours, even under standards of strict scrutiny, it should follow that the Commission's adoption of less restrictive measures to encourage the airing of material beneficial to children is consistent with the First Amendment. That is particularly true because the Children's Television Act is designed to promote programming that educates and informs children. The framers of the First Amendment understood that "the greatest menace to freedom is an inert people," as Justice Brandeis wrote.³³⁰ It is entirely consistent with the First Amendment to ask trustees of the public airwaves to pursue reasonable, viewpoint-neutral measures designed to increase the likelihood that children will grow into adults capable of fully participating in our deliberative democracy.

155. Such a requirement also is supported by the Supreme Court's decision in FCC v. Pacifica Foundation.³³¹ In that case the Court recognized that "broadcasting is uniquely accessible to children" and that "the broadcast media have established a uniquely pervasive presence in the lives of all Americans."³³² Both of those factors support Congress' decision to require broadcasters to serve the educational needs of children. As stated previously, television has an influence on children in our society rivalled only by family and

³²⁶Senate Report at 17; see also House Report at 11.

³²⁷Action for Children's Television v. FCC, 852 F.2d 1332, 1343 n.18 (D.C. Cir. 1988) (citing cases); see also R. Smolla, Smolla and Nimmer on Freedom of Speech, at 14-27 to 14-28 (1994) ("the Supreme Court has applied what might be called the 'Child's First Amendment,' permitting regulation of speech implicating children in ways that would be impermissible for adults"); Minow and LaMay Comments at 121-132.

³²⁸58 F.3d 654 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 701 (1996).

³²⁹58 F.3d at 662 (quoting Paris Adult Theatre I v. Slaton, 413 U.S. 49, 63 (1973)).

³³⁰Whitney v. California, 274 U.S. 357, 372 (1927) (concurring opinion).

³³¹438 U.S. 726 (1978).

³³²Id. at 748, 749-750.

school. It would be accurate to blend the two factors noted in Pacifica and conclude that television has a pervasive presence in the lives of American children. The Court in Pacifica upheld restrictions on the broadcast of indecent material. As stated above, the government's interest in the intellectual development of our nation's children is at least as significant as its interest in protecting them from exposure to indecent material, an interest the Supreme Court "has often found compelling."³³³

156. The measures we adopt today to advance the Nation's interest in the intellectual development of our children are sustainable under the Pacifica analysis as they are significantly less burdensome than the measure upheld there. Pacifica upheld a complete ban on a particular type of programming (indecent programming) during hours when children are likely to be in the audience, a period which the Commission was later upheld in defining as 16 hours per day (6:00 a.m.-10:00 p.m.) in Action for Children's Television. The measures we adopt today do not ban programming of any type, they simply notify broadcasters that compliance with the CTA can be achieved with, on average, less than half an hour a day of programming expressing any viewpoint on any topic that broadcasters desire.

157. For those reasons, our implementing rules are constitutional under the traditional First Amendment standard. But even if evaluated under a heightened standard, our rules would pass muster because the interest advanced is compelling and our regulations are narrowly tailored. As detailed above, our regulations are no more burdensome than necessary to ensure that children will be able to watch educational and informational programming. Like the CTA, our regulations require broadcasters to air children's educational and informational programming, but do not "exclude any programming that does in fact serve the educational and informational needs of children; rather the broadcaster has discretion to meet its public service obligation in the way it deems best suited."³³⁴ Specifically, the processing guideline that we adopt today does not limit this discretion. It provides a means by which a broadcaster can be certain that our staff will be in a position to process its renewal application without further review of the broadcaster's CTA efforts. As we explain above, any programming specifically designed to meet the educational and informational needs of children can "count" for purposes of meeting the processing guideline. In addition, a broadcaster can rely on other more general programming and related non-programming efforts to satisfy its CTA obligation -- albeit after full Commission review.

158. As the Media Institute observes, we declined to adopt quantitative processing guidelines in 1991 on the ground that they would "infringe on broadcaster discretion regarding the appropriate manner in which to meet children's educational and informational needs."³³⁵ Upon further consideration, we reject that position. Processing

³³³Denver Area Educational Telecommunications Consortium v. FCC, 116 S. Ct. 2374, 2385, 2387 (1996).

³³⁴ Senate Report at 17.

³³⁵The Media Institute Comments at 16-17 (citing Memorandum Opinion and Order, 6 FCC Rcd 5093, n.105).

guidelines give broadcasters an option for guaranteeing routine staff processing of the CTA portion of their renewal applications, but broadcasters remain free to find other ways to fulfill their obligation. In any event, our initial reluctance to adopt any form of processing guideline derived in large part from our wish to initiate implementation of the CTA with as little regulation as possible. As described above, our subsequent experience has persuaded us that we should alter our course in the interests of fairness and efficiency by clarifying ways in which broadcasters can ensure compliance.³³⁶

159. Together, the new measures that we adopt today will help parents, children, and the general public understand the programming benefits that the CTA is intended to guarantee. That understanding is necessary to ensure that the public, in exercising informal influence over the programming choices of broadcasters, can play an important role in effectuating Congress's intent to increase the amount of educational children's programming on television. Similarly, both the clearer definition and the processing guidelines give broadcasters reasonable notice of nonmandatory ways to guarantee compliance with their statutory programming obligations. Such clarity is desirable and helps to narrowly tailor our regulations.

VIII. EFFECTIVE DATES AND TRANSITION PERIOD

160. Our rules regarding on-air identification, program guides, public file, and reporting requirements will become effective on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act,³³⁷ and we will begin to evaluate compliance with these requirements in renewal applications filed after that date. Licensees should be able to implement these rules in that time frame as they relate to internal station practices and do not require steps that would necessitate a longer period of transition.

161. With respect to our newly adopted definition of programming specifically designed to serve the educational and informational needs of children, as well as our safe harbor processing guideline relating to such programming, we believe that a longer transition period is appropriate. Some licensees may need time to develop programming that complies with our new definition or to renegotiate or allow expiration of existing program contracts as necessary. Accordingly, we adopt an effective date for these rules of September 1, 1997, and will begin to evaluate compliance with these provisions in renewal applications filed after that

³³⁶See Price and Meyerson Comments at 18-19 (discussing the Commission's "gradual tailoring" in implementing the CTA).

³³⁷Thus, the first quarterly Children's Television Programming Report under these new rules must be placed by commercial broadcasters in their public file by April 10, 1997.

date.³³⁸ As with all of the provisions adopted today, these provisions will be applied on a purely prospective basis.

162. Thus, renewal applications filed earlier than September 1, 1997 will be assessed for compliance with the program-related provisions of the CTA based exclusively on the rules and criteria set forth in our 1991 CTA rulemaking proceeding. In our 1991 proceeding, we stated that licensees will be expected to "air some educational and informational programming 'specifically designed' for children 16 years of age and under in order to satisfy our renewal review",³³⁹ and we defined educational and informational programming as "any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."³⁴⁰ We will continue to follow these general standards in assessing the CTA programming performance of renewal applicants filing prior to September 1, 1997.

163. As noted above, beginning September 1, 1997, we will begin to evaluate renewal applications to determine the extent to which licensees are providing educational programming that complies with the new definition of core programming using the new processing guideline.³⁴¹ In this renewal cycle (i.e. for applications filed through April 1999) such renewals will cover licensee performance that both pre-dates and post-dates these new rules. Licensee performance during the term that predates the relevant effective dates will be evaluated under existing standards and performance that post-dates the rules will be judged under the new provisions. As a practical matter, the new program-related provisions will apply to a relatively small portion of the license terms for renewal applications filed in the current renewal filing cycle after September 1, 1997.

³³⁸As noted above, our rules regarding on-air identification, program guides and public file requirements will be effective sooner and we will begin to assess compliance with them after their effective date. To the extent these rules require licensees to provide information or announcements regarding their core educational programming, they should use our new definition of such programming once it goes into effect on September 1, 1997. Prior to that date, licensees will need to provide such information or announcements based on their judgment as to what programs qualify under the general statutory wording as "specifically designed" to serve the educational and informational needs of children.

³³⁹Report and Order, 6 FCC Rcd at 2115.

³⁴⁰47 C.F.R. § 73.671 Note. We also stated that broadcasters must air some standard-length children's programs in order to satisfy the renewal review requirement. Memorandum Opinion and Order, 6 FCC Rcd at 5101.

³⁴¹Thus, the new definition and processing guideline will be applied for the first time to television renewal applications filed on or before October 1, 1997 for stations whose renewal terms expire February 1, 1998.